

REMARKS

The Office Action of February 18, 2009 has been reviewed and the comments therein were carefully considered. Claims 9, 27, 29, 30-31, and 33-52, 54-56, and 58 are pending with this paper. Claims 30-31 have been withdrawn from consideration. Claims 9, 27, 29, 43, 44, and 51 are rejected. Applicant is cancelling claims 53 and 57 without prejudice.

Applicant acknowledges that claims 33-42, 45-50, and 52-58 are objected to as being dependent upon a rejected base claim, but would be allowable if all corresponding objected claims are merged and rewritten in independent form including all of the limitations of the base claim and all intervening claims.

The Notice of Non-Compliant Amendment alleges that claims 30-31 and 58 were not provided with a proper status identifier. Applicant has further amended in accordance with the Notice. Applicant thanks the Examiner for an explanation of the claim status for claims 30 and 31 as provided in a telephone conversation on October 13, 2009.

Claim Rejections Under 35 U.S.C. §101

Claims 29, 43, 38-42, 44-50, and 57-58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant believes that the rejection of claim 50 is improper because the claim is not directed to a method as alleged. Applicant is amending claims 29 and 38-42 to be directed to apparatus. The amendments are supported by the specification as originally filed, *e.g.*, page 14, lines 15-20. The Office Action alleges (Page 4):

Claims 29, 43, 38-42, 44-50, and 57-58 are rejected under 35 U.S.C. 101 based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C. § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.

The Office Action also alleges (Page 5):

Claims 43-50, and 57-58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The Office Action further alleges (Page 5):

Claims 43-50, and 57-58 are not statutory because they are directed towards a method accessing an application without authenticating the requesting device which could be

implemented via software alone, thus interpreted as software per se, however, the claims fail to assert the program recorded on an appropriate computer-readable medium so as to be structurally and functionally interrelated to the medium and permit the function of the descriptive material to be realized. Since a computer program is merely a set of instructions capable of being executed by a computer without a computer-readable medium needed to realize the computer program's functionality, it is regarded as nonstatutory functional descriptive material. See MPEP 2106.01 for details.

However, claims 29, 38-42, and 50 are directed to an apparatus, and consequently Applicant believes that the claimed subject matter is statutory under 35 USC §101.

Regarding independent claim 43, Applicant is amending the claim to include the features of “receiving, by a processor, a request to access an application and passing it, without authenticating the requesting device, to an arbitration component interfacing the service” and “determining, by the processor, in the arbitration component, whether to grant or refuse access to the application, wherein if the determination requires an authentication of the requesting device, the authentication is performed during that determination and not previously, wherein the determination is made on the basis of the identity of the application requested.” The amendment is supported by the patent application as originally filed, *e.g.*, Figures 4 and 6; page 12, line 5 – page 15, line 16.) Claim 43 is directed to a process that is tied to a particular machine and is consequently is statutory. (In *re Bilski et al*, 88 USPQ 2d 1385 CAFC (2008).) Moreover, claims 44-49 and 58 ultimately depend from claim 43. Applicant thus requests reconsideration of claims 29, 38-42, 43-50, and 58.

Claim Rejections Under 35 U.S.C. §102

Claims 9, 27, 29, 43-44, and 51 are rejected under 35 USC 102(e) as allegedly being anticipated by U.S. Patent No. 6,754,713 (Dascalu).

Regarding 9, Applicant is amending the claim to include the feature of “wherein the authentication component is configured to authenticate the communicating device by verifying an identity of the communicating device or by verifying a personal identification number.” The feature is contained in claim 53, now cancelled. The Office Action indicates that claim 53 contains allowable subject matter and does not provide any reasons to reject the claim. Moreover, Dascalu merely discusses a session wall device which is connected to a local area

network for passively listening to communications sent over the network and for terminating communication sessions between devices if it detects an event which is not permitted. As illustrated in Fig. 1 of Dascalu, the session wall device is connected to a network 1 via a network adapter 2. The session wall device includes a protocol scanner 16 which scans data in a received data buffer 6 and compares it with access rules 10 to determine whether a message between devices is permitted or not. The access rules 10 are a table of groups of servers, groups of clients and rules between them. The rules define actions which should take place when a specific set of protocols are used when two or more parties communicate. When the protocol scanner 16 detects an event which is not permitted by the access rules 10, the protocol scanner 16 generates a message which terminates the communication session in which that event took place. Dascalu further discusses access rules 10. For example, Dascalu discloses that (Column 5, lines 6-20. Emphasis added.):

Access rules 10 mentioned above are a table of groups of servers, groups of clients, and rules between them. The rules define actions which should take place when a specific set of protocols is used when two or more parties communicate, and also, when specific data content, or specific data sequences are passed over the network. The definition contains several logical and mathematical combinations after which a specific action is to be performed. For example, if a client is connecting to a Telnet server and is using an FTP session on that server, the session wall will issue a command to the Telnet server to terminate the FTP session. Another example is that if a client is limited to two concurrent sessions of Telnet and FTP together and he tries to open a third session, both server and client will get a message that the other party closed the connection in order to inhibit the third session.

Dascalu merely discusses access rules 10 to detect a protocol error (*e.g.*, attempting to establish an FTP session with a Telenet server). However, Dascalu does not discuss any authentication functions. As taught by Dascalu, protocol scanner 16 assumes that it correctly knows which devices are communicating in the session. Regarding independent claim 27, Applicant is amending the claim to include the similar feature of “wherein the authentication component is configured to authenticate the communicating device by verifying an identity of the communicating device or by verifying a personal identification number.”

Regarding independent claim 29, Applicant is amending the claim to include the similar feature of “wherein authentication includes verifying an identity of the communicating device or verifying a personal identification number.” The feature is contained in claim 57, now cancelled.

The Office Action indicates that claim 57 contains allowable subject matter and does not provide any reasons to reject the claim under 35 U.S.C. §102. Similarly, independent claim 43 includes the feature of “wherein authentication includes verifying an identity of the communicating device or verifying a personal identification number.” Also, independent claim 51 includes the similar feature of “wherein authentication includes verifying an identity of the communicating device or verifying a personal identification number.” Moreover claim 44 depends from claim 43 and is patentable for at least the above reasons. Applicant requests reconsideration of claims 9, 27, 29, 43-44, and 51.

Applicants therefore respectfully request reconsideration of the pending claims and a finding of their allowability. A notice to this effect is respectfully requested. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,

Date: October 13, 2009

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